

FILED '10 OCT 28 10:25 USDC-ORE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
EUGENE DIVISION

BOBBY SHANE CHARLTON,

Plaintiff,

Civil No. 09-1246-TC

v.

FINDINGS AND
RECOMMENDATION

OREGON DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

COFFIN, Magistrate Judge.

Defendants move to dismiss on grounds including failure to exhaust administrative remedies. Defendants' Motion to Dismiss (#45). Plaintiff has moved for an indefinite extension of time on the grounds that he is "unable to move forward ... at this time." Request for Extension of Time (#50) p. 1. Plaintiff also alleges that he needs to "work through the grievance process and or get the Federal Court intervention." Id., p. 3.

42 U.S.C. § 1997(e)(a) requires that inmates exhaust all

administrative remedies prior to filing an action under 42 U.S.C. § 1983. Porter v. Nussle, 534 U.S. 516, 531-32 (2002); Booth v. Churner, 532 U.S. 731 (2001); Griffin v. Arpaio, 557 F.3d 1117 (9th Cir. 2009); Wyatt v. Terhune, 315 F.3d 1108, 1120 (9th Cir. 2003).

If the District Court determines that the prisoner has not exhausted administrative remedies, the proper remedy is dismissal of the claim without prejudice. Waytt v. Terhune, 315 F.3d 1108 (9th Cir. 2003)

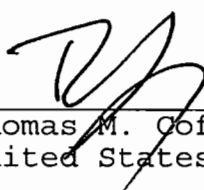
The Oregon Department of Corrections has a grievance system to address inmate complaints. See, OAR 291-109-0100 through 291-109-0190.

Defendants' Memorandum (#46) and exhibits (#47) establish that plaintiff did not properly exhaust administrative remedies with respect to his claims in this case. Plaintiff's implicitly concedes his failure to exhaust. Request for Extension of Time (#50), p. 3.

Accordingly, Defendants' Motion to Dismiss (#45) should be allowed. Plaintiff's claims should be dismissed without prejudice. Plaintiff's Motion for Extension of time (#42) should be denied as moot. Plaintiff's Motion for Extension of time (#50) should be construed as a motion for voluntary dismissal without prejudice and should be allowed. Plaintiff's Motion for Appointment of Counsel (#49) and Motion for Summary Judgment (#48) should be denied as moot. This proceeding should be dismissed.

This recommendation is not an order that is immediately appealable to the Ninth Circuit Court of Appeals. Any notice of appeal pursuant to Rule 4(a)(1), Federal Rules of Appellate Procedure, should not be filed until entry of the district court's judgment or appealable order. The parties shall have fourteen (14) days from the date of service of a copy of this recommendation within which to file specific written objections with the court. Thereafter, the parties have fourteen (14) days within which to file a response to the objections. Failure to timely file objections to any factual determinations of the Magistrate Judge will be considered a waiver of a party's right to de novo consideration of the factual issues and will constitute a waiver of a party's right to appellate review of the findings of fact in an order or judgment entered pursuant to the Magistrate Judge's recommendation.

DATED this 26 day of October, 2010.



Thomas M. Coffin
United States Magistrate Judge